

“(A) The inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05 - §806.05(i)); **and**
(B) **There must be a serious burden on the examiner** if restriction is required (see MPEP §803.02, §806.04(a)-§806.04(i), §808.01(a), and §808.02).”
(Emphasis added.)

No such serious burden has been alleged in the Office action, and it is Applicant’s position that no such serious burden exists.

Claim 33, as originally presented, recited:

An apparatus comprising

a container having a solution of DNA therein, and

a temperature control system,

wherein said temperature control system creates thermal gradients in the solution which result in the redistribution of DNA.

That claim was examined by the Office. Indeed, the claim was rejected over certain prior art references. Claim 33 was subsequently amended and currently reads:

33. An apparatus comprising

a container having a solution of DNA therein; and

a temperature control system,

wherein said temperature control system creates a temperature gradient in the solution sufficient to produce movement of the DNA through the solution and wherein the movement of the DNA through the solution is in a direction parallel to the temperature gradient.

The Office contends that restriction is again proper, as the pending claims have never been examined. Applicant respectfully disagrees.

Pending claim 33 is substantially similar to the earlier version claim 33 that was examined by the Office and rejected over the prior art, the only difference residing in the final

clause of the claim Applicant submits that current claim 33 has been examined and that, as such, further restriction is improper. How can there be a serious burden on the Office to examine pending claim 33 when such examination was already conducted by the Office?

The restriction requirement should, therefore, be withdrawn.

PROVISIONAL ELECTION

Applicant provisionally elects the species of fluorescent label.

PRIOR ARGUMENTS

The Office has asked for clarification as to which arguments of those filed with Applicant's prior responses are in effect. Applicant's respectfully request that the Office consider all of Applicant's prior arguments as to the patentability of the present claims.


CONCLUSION

Applicant maintains that restriction is improper in the present application.
Reconsideration of the restriction requirement is earnestly solicited.
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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